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No. 91-265

IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

POTOMAC EDISON COMPANY,
Petitioner,

v.

JOE D. HELMICK, TAMMY HELMICK,
and CARL BELT, INC.,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Appeals of West Virginia

---

BRIEF IN OPPOSITION BY CARL BELT, INC.

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STATEMENT OF THE CASE

The Petition arises from a civil tort dispute for personal injuries caused by electrical burns. Petitioner, Potomac Edison Company, the supplier of a dangerous instrumentality under West Virginia law, was held liable to Mr. & Mrs. Joe Helmick for negligently failing to secure and make safe a utility pole which was in the path of work being performed by Mr. Helmick for his employer, Carl Belt, Inc.

This Respondent paid workers' compensation benefits in the amount of $53,760.00 to Mr. Helmick, pursuant to the West Virginia workers' compensation scheme. Carl Belt, Inc. was then initially named as a defendant in a civil case filed by the Helmicks, under West Virginia's limited exception to the exclusive remedy/employer immunity doctrines which allows an employee to obtain recovery over and above the statutory compensation if the employer acted with deliberate intention to expose him to a hazard. Potomac Edison asserted a cross-claim against Respondent on similar grounds.

Ultimately, the Helmicks' claims against Carl Belt, Inc. were dismissed before trial. The trial Judge also directed a verdict against Potomac Edison on its crossclaim against Carl Belt, Inc.

The jury then returned a verdict in favor of the Helmicks in the amount of $498,232.84, to which was added prejudgment interest. The jury determined that Potomac Edison was 40% responsible for the injuries and that Carl Belt was 60% liable, even though this Respondent was not permitted to argue its position before the jury. By operation of West Virginia's compensation statute, Potomac Edison, as the third-party wrongdoer, was held solely responsible for the verdict. The judgment was affirmed, in its entirety, by the West Virginia Supreme Court of Appeals on June 27, 1991.

Now, Petitioner asks this Court to federalize the West Virginia tort and workers' compensation systems by directing that the prohibition against contribution by a workers' compensation paying employer be abolished because the confluence of statutory and common law doctrines, as applied here, is purportedly arbitrary and capricious in violation of due process and equal protection guarantees.

REASONS FOR DENYING THE WRIT

I. THERE IS NO SIGNIFICANT FEDERAL INTEREST IN DICTATING TO WEST VIRGINIA THE CONTENT OF ITS TORT LAW

For more than 70 years, this Court has upheld ". . . the authority of the States to establish by legislation departures from the fellow-servant rule and other common-law rules affecting the employer's liability for personal injuries to the employee." *New York Central Railroad v. White*, 243 U.S. 188, 200 (1917). Indeed, this Court long ago held that a third party wrongdoer, obligated to indemnify an employer or the insurer of the employer by virtue of the provisions of an applicable workers compensation statute, was not unconstitutionally deprived of property. *Staten Island Railroad v. Phoenix Company*, 281 U.S. 98 (1930). In short, the propriety of each of the several states developing rules governing compensation for injured workers is manifest and well-settled.

The only Constitutional limitation on the ability of the states to evolve their own tort laws and workers compensation systems free from federal intervention is the prohibition against "wholly arbitrary or irrational" results. *Martinez v. California*, 444 U.S. 227, 282 (1980). Stated otherwise, a state can regulate the rights and liabilities of its citizens "in accordance with its own conception of policy and fairness unless in so doing it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934). This follows from the fact that the Fourteenth Amendment does not obligate the states to adopt specific doctrines or reforms. *Ownbey v. Morgan*, 256 U.S. 94, 112 (1921).

Contrary to Petitioner's ambiguous and conclusory arguments concerning the unfairness of the particular judgment in this case, the confluence of tort doctrines and

workers' compensation remedies under West Virginia law is neither arbitrary nor irrational as applied to a third-party wrongdoer. West Virginia's laws are designed to preserve and foster legitimate state interests.

West Virginia has embraced the majority rationale for the employer's immunity from tort liability as a fundamental policy underpinning for its workers' compensation system. In *Crawford v. Parsons*, 141 W. Va. 752, 92 S.E.2d 913 (1956) the West Virginia Supreme Court of Appeals quoted Professor Larson as follows:

> The reason for the employer's immunity is the *quid pro quo* by which the employer gives up his normal defenses and assumes automatic liability, while the employee gives up his right to common-law verdicts. *Id.* at 759 (*quoting* 2 Larson, Workmen's Compensation, § 72.20.)

A necessary corrollary to an employer's immunity in tort is the prohibition against claims for contribution or identification asserted by third-party wrongdoers. Acceptance of Petitioner's arguments would allow recovery against the employer based upon negligence and, thereby, totally eviscerate the workers' compensation scheme in West Virgina by subjecting employers to *per se* statutory responsibility *and* tort liability. Such an inherently contradictory approach would dramatically alter the *quid pro quo* balance. The limitation of liability is, therefore, neither arbitrary nor irrational since it serves the laudable and rational goal of ensuring prompt and definite payments for injuries sustained in the workplace. Thus, there is no due process or equal protection issue presented in the Petition.

II. THIS COURT HAS PREVIOUSLY REJECTED SIMILAR ATTACKS ON COMPARABLE WORKERS' COMPENSATION PROVISIONS

Purported instances of similarly unfair results have previously been raised under the Federal workers' compensation scheme. For example, a doctrine has developed under the Longshoremen and Harbor Workers' Compensation Act that, in the case of a latent disease, the employer with the last injurious exposure is held responsible for all compensation benefits. In a hypothetical situation, an employee exposed to asbestos fibers throughout his work life can obtain compensation benefits from his last employer even though that employment relationship may have existed for only a matter of months. *See Traveler's Insurance Company v. Cardella*, 225 F.2d 137 (2d Cir.), *cert. denied*, 350 U.S. 913 (1955); *Cordero v. Triple A Machine Shop*, 580 F.2d 1331 (9th Cir.), *cert. denied*, 440 U.S. 91 (1978). Yet, this result has never been overturned on due process or equal protection grounds in this Court.

This Court has consistently upheld the broad purpose of workers' compensation legislation to eliminate to the employee, as well as to third-parties, any recourse against the employer for negligence inasmuch as the workers' compensation system provides statutory benefits irrespective of fault and is, therefore, not a tort mechanism for fixing damages. *See Mahnick v. Southern S/S Co.*, 321 U.S. 96 (1944); *Seas Shipping Co. v. Sieracki*, 328 U.S. 85 (1946); *Ryan Stevedore Co., Inc. v. Pan-Atlantic S/S Co.*, 350 U.S. 124 (1956). Indeed, it is the majority rule that a third-party wrongdoer cannot sue a negligent employer as a joint tortfeasor under concepts of either contribution or indemnity. *See* 2B Larson, *The Law Of Workmen's Compensation*, § 76.20 at 14.654 (1989). The West Virginia system is manifestly consistent with this majority rule by prohibiting contribution against a compensation paying employer.

The prohibition against contribution also serves definite and valuable policy interest. The employer has an absolute liability to injured employees, irrespective of fault. In exchange for giving up negligence defenses, the employer is provided immunity from claims beyond the statutory workers' compensation requirements. Even where states have adopted comparative negligence, there has been no dramatic change in this exclusive remedy rule. *See id.*, § 76.20 at 14-685. Since the employer is not liable in tort to its employee, the employer can never be a joint tortfeasor. Therefore, there is no reasonable basis for contribution or indemnification.

III. THE ISSUE OF EMPLOYER IMMUNITY FROM THIRD-PARTY CLAIMS SHOULD BE LEFT TO THE STATES FOR DEVELOPMENT

Certain particular cases may appear to lead to unfair results. However, as Petitioner recognizes, the issues implicated here require policy judgments which are best and properly left to the States for development. The States should be allowed to establish, as a matter of policy, the ". . . relative weight given to three competing values: stability, equity and simplicity." *Id.* Section 76.92 at 14-886. West Virginia has properly opted for stability and simplicity in its system of compensating injured workers and allowing recovery against third-party wrongdoers. This is the course of action taken by most courts and is entirely deserving of respect.

In more than 70 years since workers compensation laws were first enacted in the United States, only two State Supreme Courts have questioned, on the constitutional grounds, the exclusive remedy/employer immunity doctrine. The decisions in *Sunspan Engineering and Construction Company v. Springlock Scaffolding Company*, 310 So.2d 4 (Fla. 1975) and *Carlson v. Smogard*, 298 Minn. 362, 215 N.W.2d 615 (1974) are aberrant determinations with little substantive analysis and, certainly, no

persuasive rationale which could support the intervention by compensation laws in the State of West Virginia.

CONCLUSION

Accordingly, there is no basis for this Court to grant the pending Petition. The tort and workers' compensation regimes evolving in West Virginia are based upon policies which are rationally related to appropriate state interests. There are no fundamental Constitutional rights implicated in this case. The several States have the authority to create and regulate the systems whereby private disputants are assigned monetary responsibility for wrongful conduct. Society has a minimal concern with the outcome of this case in which the ultimate result sought by the Petitioner is a reduction in a damages award and the federalizing of State tort and compensation laws.

Therefore, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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